



DEPARTMENT OF HEALTH & HUMAN SERVICES  
Health Care Financing Administration

Center for Medicaid and State Operations  
7500 Security Boulevard  
Baltimore, MD 21244-1850

SMDL #01-023

July 11, 2001

Dear State Medicaid Director:

The purpose of this letter is to provide guidance to the Medicaid agency regarding the attestation of facility compliance with the Centers for Medicare & Medicaid Services' (CMS), formerly the Health Care Financing Administration, January 22, 2001, interim final rule (HCFA-2065 IFC) Medicaid Program; Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities (PRTFs) Providing Psychiatric Services to Individuals Under Age 21 (66 Fed. Reg, 7148) and the May 22, 2001, amendment and clarification (HCFA-2065 IFC2) to the interim final rule. Section 483.374 of the interim final rule requires a psychiatric residential treatment facility that provides Medicaid inpatient psychiatric services to individuals under age 21 ("Psych Under 21 benefit," or "Psych Under 21 services") to attest, in writing, that the facility is in compliance with all of the standards governing the use of restraint and seclusion. Also included in this letter is a summary of the reporting requirements specified by the rule.

### **Background**

An interim final rule establishing standards for the use of restraint and seclusion in PRTFs providing Psych Under 21 services (the Psych Under 21 rule) was published on January 22, 2001. An amendment and clarification to this rule was published on May 22, 2001, with an immediate effective date. This rule establishes a definition of a PRTF that is not a hospital and that may furnish covered inpatient psychiatric services for individuals under age 21. The rule also establishes a Condition of Participation (CoP) for the use of restraint and seclusion that PRTFs must meet in order to provide, or to continue to provide the Medicaid Inpatient Psych Under 21 benefit. The CoP specifies requirements designed to protect the residents against the improper use of restraint and seclusion that include, but are not limited to: parental/guardian notification when restraints or seclusion is used; reporting of serious occurrences involving a resident; staff education and training requirements; requirements for monitoring residents in and immediately after seclusion; etc. The interim final rule published on January 22, 2001, and the interim final rule amendment published May 22, 2001, can be accessed on [www.access.gpo.gov](http://www.access.gpo.gov) under the published date of January 22, 2001, and May 22, 2001. The questions and answers on the interim final rule can be found on CMS's website at [www.hcfa.gov/medicaid/psychq&a.htm](http://www.hcfa.gov/medicaid/psychq&a.htm).

### **Reporting**

Under the Psych Under 21 rule, each PRTF is required to report a resident's death, serious injury, and a resident's suicide attempt to the State Medicaid agency and, unless prohibited by state law, to the state-designated Protection and Advocacy system (P&As). In addition, Section 42 CFR §483.374(c) states: "In addition to the reporting requirements contained in paragraph (b) of this section, facilities must report the death of any resident to the Centers for Medicare and Medicaid Services (CMS) regional office. Staff must report the death of any resident to the CMS regional office by no later than

close of business the next business day after the resident's death. Staff must document in the resident's record that the death was reported to the HCFA regional office.”

The State Medicaid agency should establish a system to accept and monitor the reports of serious occurrences submitted by the PRTFs, as required by section 483.374(b) of this rule. The State Medicaid Agency should develop a mechanism for sharing this information with the State Survey Agency. When notifying PRTFs of the reporting and attestation requirements of the rule, please inform them of their responsibility under section 483.374(c) of the rule to notify the CMS regional office of the death of any resident. A list of the regional office contacts is attached (attachment A).

### **Attestation**

Section 483.374(a) of the rule requires a facility with a current provider agreement with the Medicaid agency to provide the Medicaid agency its attestation of compliance by July 21, 2001. A facility subsequently enrolling as a Medicaid provider must meet the requirements of the Psych Under 21 rule at the time it executes a provider agreement with the Medicaid agency and submit an attestation at that time. The attestation must be signed by an individual who has the legal authority to obligate the facility.

A number of states have requested guidance regarding the type of information that should be included in the attestation. While states certainly have the flexibility to design individual attestation forms, attached is a model letter that you may find useful (attachment B). At a minimum, the attestation should include:

- ◆ the name, address, telephone number of the facility, and a provider identification number;
- ◆ the signature and title of the individual who has the legal authority to obligate the facility;
- ◆ the date the attestation is signed;
- ◆ a statement certifying that the facility currently meets all of the requirements of Part 483, Subpart G governing the use of restraint and seclusion;
- ◆ a statement acknowledging the right of the State Survey Agency (or its agents) and, if necessary, CMS to conduct an on-site survey at any time to validate the facility's compliance with the requirements of the rule, to investigate complaints lodged against the facility, or to investigate serious occurrences;
- ◆ a statement that the facility will notify the State Medicaid Agency if it no longer complies with the requirements of the rule; and

- ◆ a statement that the facility will submit a new attestation of compliance in the event the individual who has the legal authority to obligate the facility is no longer in such position.

**Please provide CMS a copy of the transmittal issued to your facilities requesting the attestation and attach a list, including the names and addresses, of those facilities in your program. This information should be sent to:**

Branch Chief, Continuing Care Provider Branch  
Division of Nursing Homes and Continuing Care Services  
Survey and Certification Group  
Center for Medicaid and State Operations  
Mail Stop S2-12-25  
7500 Security Boulevard  
Baltimore, Maryland 21244  
Fax: 410-786-6730

### **Validating Facility Attestation**

We stated in the preamble of the interim final rule published on January 22, 2001, that we would provide guidance for developing a process for sampling facilities to validate their attestation of compliance with the rule. The preamble to the rule specifies that we expect states to validate the attestations for a sample of 20 percent of the facilities on an annual basis. Each year the State Medicaid Agency should select a random, representative sample to approximate 20 percent of its facilities in the state. The selected sample should be transmitted to the State Survey Agency in order to conduct on-site surveys to ensure the facilities have policies and procedures in place consistent with the attestation and are complying with the requirements of the Psych Under 21 rule. Documentation of the sampling methodology should be maintained by the State Medicaid Agency and conveyed to the State Survey Agency at the time the sample is selected.

We expect facilities to have implemented the interim final rule, including the attestation requirement by July 21, 2001. We are currently developing a proposed timeline to implement the enforcement requirements of the Psych Under 21 rule which include but are not limited to:

- the development and dissemination of a survey protocol for validation and investigation surveys;
- training of state and Federal surveyors; and
- the anticipated enforcement procedures and actions for those facilities found out of compliance with the Psych Under 21 rule.

If you have any questions, or need further clarification about these requirements, please contact Mary Kay Mullen at (410) 786-5480.

Sincerely,

/s/

Penny R. Thompson  
Acting Director

Attachments:

Attachment A –CMS Regional Office Contacts

Attachment B – Model Attestation Letter

cc:

CMS Regional Administrators

CMS Associate Regional Administrators

For Medicaid and State Operations

Lee Partridge

Director, Health Policy Unit

American Public Human Services Association

Joy Wilson

Director, Health Committee

National Conference of State Legislatures

Matt Salo

Director of Health Legislation

National Governors' Association

Brent Ewig

Senior Director, Access Policy

Association of State and Territorial Officials

## CMS Regional Office Contacts

Margaret Leoni-Lugo  
Boston Regional Office  
(617) 565-1299

Lois Suntzenich  
New York Regional Office  
(212) 264-3942

Stuart Cogan  
Philadelphia Regional Office  
(215) 861-4734

Joseph Hopko  
Philadelphia Regional Office  
(215) 861-4192

Brenda Nimmons  
Atlanta Regional Office  
(404) 562-7405

Kellie Wright  
Atlanta Regional Office  
(404) 562-7470

Dorsey Lecompte  
Chicago Regional Office  
(312) 353-5183

Amy Fiesler  
Dallas Regional Office  
(214) 767-4434

De Friedrich  
Kansas City Regional Office  
(816) 426-2011

Nancy Rios  
Kansas City Regional Office  
(816) 426-2408

Dorothy Brinkmeyer  
Denver Regional Office  
(303) 844-7043

Helen Jewell  
Denver Regional Office  
(303) 844-7048

Ruth Patience  
San Francisco Regional Office  
(415) 744-3727

Diana L. Migchelbrink  
Seattle Regional Office  
(206) 615-2089

Judith Ramberg  
Seattle Regional Office  
(206) 615-2404

## Model Attestation Letter

*This attestation must be signed by an individual who has the legal authority to obligate the facility.*

Name of the Psychiatric Residential Treatment Facility

Address

City, State, Zip Code

Telephone Number

Fax Number (if applicable)

Provider Number

Dear <State Medicaid Director>,

A reasonable investigation subject to my control having been conducted in the subject facility, I make the following certification. Based upon my personal knowledge and belief, I attest that the <NAME of the FACILITY> hereby complies with all of the requirements set forth in the interim final rule governing the use of restraint and seclusion in psychiatric residential treatment facilities providing inpatient psychiatric services to individuals under age 21 published on January 22, 2001, and amended with the publication of May 22, 2001 (Psych Under 21 rule).

I understand that the Centers for Medicare and Medicaid Services (formerly HCFA), the State Medicaid Agency or their representatives may rely on this attestation in determining whether the facility is entitled to payment for its services and, pursuant to Medicaid regulations at 431.610, have the right to validate that <Name of the Facility> is in compliance with the requirements set forth in the Psych Under 21 rule, and to investigate serious occurrences as defined under this rule.

In addition, I will notify the <Name of the State Medicaid Agency> immediately if I vacate this position so that an attestation can be submitted by my successor. I will also notify the State Medicaid Agency if it is my belief that <Name of the Facility> is out of compliance with the requirements set forth in the Psych Under 21 rule.

Signature  
Printed Name  
Title  
Date

Mmullen\g\bcp\mkmullen\psychreg\attest.doc\revised:6/18/01

Revised: 6/19/01 per comments from Lewis Morris, Office of Counsel to the IG

Revised: 6/27/01 per comments

Revised:6/29/01: per OGC comments; saved as g:bcp:mkmullen/psychreg/attest2.doc

Revised: 7/10/01: per APHSA/NASMHPD comments and Fsokolok comments: saved as g:bcp:mkmullen/psychreg/attest3.doc